137

(1)

Supreme Court, U.S.
FILED

No. 09-228 JUL 17 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

In The

Supreme Court of the United States

DANIEL GABINO MARTINEZ and
STEPHANY HALENE MARTINEZ,

Petitioners,

v.

DORDANE MASSERI and
WELLS FARGO BANK,

Respondents.

On Petition For Writ Of Certiorari
To The New Mexico Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Petitioners – Pro Se
DANIEL GABINO MARTINEZ
STEPHANY HALENE MARTINEZ
585 Camino Montebello
Santa Fe, New Mexico 87501
(505) 984 8386

QUESTIONS PRESENTED FOR REVIEW

First Question Presented for Review

Does the requirement for New Mexico courts to take judicial notice of official acts of the judicial departments of the United States make filing, registration and domestication of federal judgments prior to execution unnecessary as a matter of law?

Second Question Presented for Review

Does the "USDC" have attachment jurisdiction in Santa Fe county New Mexico?

Third Question Presented for Review

Have the state courts decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals?

Fourth Question Presented for Review

Do the state court decisions deprive Petitioners of equal protection of the law accorded to other litigants similarly situated?

Fifth Question Presented for Review

Do the state court decisions deprive Petitioners of due process, right to petition for redress and access to the courts, and right to trial by a jury?

QUESTIONS PRESENTED FOR REVIEW – Continued

Sixth Question Presented for Review

Do the state court decisions rest on an adequate, independent determination of state law?

Seventh Question Presented for Review

Do the state court decisions conflict with relevant decisions of this court?

Eighth Question Presented for Review

Were Petitioners' chattels taken in execution pursuant to New Mexico law?

LIST OF PARTIES

Petitioners:
Daniel Gabino Martinez
Stephany Halene Martinez
585 Camino Montebello
Santa Fe, New Mexico 87501-6303
(505) 984-8386

Respondents:
Dordane Masseri
Wells Fargo Bank
c/o Alicia Gutierrez
Moses, Dunn, Farmer & Tuthill, P.C.
612 First Street N.W.
Albuquerque, New Mexico 87125-7047
(505) 843-9440

First Judicial District Court of New Mexico
Judicial complex
100 Catron Street
P.O. Box 2268
Santa Fe, New Mexico 87504-2268
(505) 476-0189

Court of Appeals of New Mexico
P.O. Box 2008
Santa Fe, New Mexico 87504-2008
(505) 827-4925

Supreme Court of the State of New Mexico
P.O. Box 848
Santa Fe, New Mexico 87504-0848
(505) 827-4860

TABLE OF CONTENTS

Page

Questions Presented for Review i

List of Parties iii

Table of Contents iv

Table of Authorities v

Opinions Below 1

Statement of Jurisdiction 1

Cited Statutes, Rules, and Constitutional Provisions 2

Statement of the Case 10

Argument 16

Reasons Why the Writ Should Issue 28

Conclusion 30

Appendix

NMCA's Memorandum Opinion ..... App. 1

Order Granting Motion for Summary Judgment ..... App. 10

Order Denying Writ of Certiorari ..... App. 13

Order NMCA Denying Motion for Reconsideration ..... App. 15

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Caha v. United States, 152 U.S. 211 (1894).....22

M'Elmoyle v. Cohen, 38 U.S. (13 Pet.) 312, 10 L. Ed. 177 (1839).....1, 20

Stoll v. Gottlieb, 305 U.S. 165, 59 S.Ct. 134, 83 L. Ed. 104 (1938).....*passim*

STATE CASES

Conglis v. Radcliffe, 889 P.2d 1209, 119 N.M. 287 (1995).....20, 26

Galef v. Buena Vista Dairy, 117 N.M. 703, 875 P.2d 1134 (1994).....*passim*

Walter E. Heller Western, Inc. v. Ditto, N.M. App. 1998, 959 P.2d 560, 125 N.M. 226, *cert. denied*, 958 P.2d 105, 125 N.M. 147 (1998).....15, 19, 20, 26

STATUTES

28 U.S.C. § 111.....3, 21

28 U.S.C. § 132.....3, 21

28 U.S.C. § 1651(a).....1

28 U.S.C. § 1738.....2, 14, 20, 21

NMSA 35-12-3.....*passim*

NMSA 35-12-19.....7, 14, 24, 25, 26

NMSA 39-4A-1 through NMSA 39-4A-6.....*passim*

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Report of The Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States (titled "Jurisdiction over Federal Areas within the States" Library of Congress document number INB/10/1/957/PT2) 22

RULES

NMRA Rule 1-044 .....*passim*

NMRA Rule 1-065.2 .....*passim*

CONSTITUTIONAL PROVISIONS

Constitution of the United States 8

Article I Section 8 Clause 17 .....8, 21

Article IV Section 1 .....*passim*

Amendment V 9, 26, 28

Amendment VII 9, 28

Amendment XIV Section 1 .....10, 26

OPINIONS BELOW

Petitioners seek this Court's review of state court decisions of the First Judicial District Court of New Mexico court (hereinafter "NMDC") the New Mexico Court of Appeals (hereinafter "NMCA") and the New Mexico Supreme Court, copies of which appear in the Appendix as pages 3, 4, 27-35, 85-86.

STATEMENT OF JURISDICTION

As authorized by 28 U.S.C. § 1651(a), this court may issue all writs necessary or appropriate in aid of its appellate jurisdiction.

The rulings of the "NMDC", "NMCA", and New Mexico Supreme Court disregarded decrees of this court in *M'Elmoyle v. Cohen*, 38 U.S. (13 Pet.) 312, 325, 10 L. Ed. 177 (1839) and *Stoll v. Gottlieb*, 305 U.S. 165, 170, 59 S.Ct. 134, 83 L. Ed. 104 (1938) and deny Petitioners' rights protected by the Constitution of the United States.

Petitioners have exhausted state court review of the state courts' judgments and determination of federal questions and have no other plain, speedy, or adequate remedy in the ordinary course of the law to correct the injustice done to Petitioners. Petitioners hereby request this Court jurisdiction to fashion a remedy as requested herein.

CITED STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

Cited Federal Statutes:

Title 28 U.S.C. § 1738. State and Territorial statutes and judicial proceedings; full faith and credit

> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Title 28 U.S.C. § 132. Creation and composition of district courts

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

Title 28 U.S.C. § 111. New Mexico

New Mexico constitutes one judicial district.

Court shall be held at Albuquerque, Las Cruces, Las Vegas, Roswell, Santa Fe, and Silver City.

Cited State Statutes:

NMRA Rule 1-044 Judicial notice and determination of foreign law.

> (A) Judicial notice. The courts of New Mexico shall take judicial notice of the following facts: (3) public and private official acts of the legislative, executive and judicial departments of the United States, and the laws of the several states and territories of the United States, and the interpretation thereof by the highest courts of appellate jurisdiction of such states and territories;

NMSA 39-4A-1 Short title.

> This Act [39-4A-1 to 39-4A-6 NMSA 1978] may be cited as the "Foreign Judgments Act"

NMSA 39-4A-2 Definitions.

> As used in the Foreign Judgments Act [39-4A-1 NMSA 1978] "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

NMSA 39-4A-3 Filing and status of foreign judgments.

> A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of the district court of any county of this state in which the

judgment debtor resides or has any property or property rights subject to execution, foreclosure, attachment or garnishment. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed shall have the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, staying, enforcing or satisfying as a judgment of the district court of this state and may be enforced or satisfied in like manner, except as provided in Subsection B of this section.

B. All property in this state of a judgment debtor is exempt from execution issuing from a foreign judgment filed pursuant to Subsection A of this section that is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

NMSA 39-4A-4 Notice of filing.

A. At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the district court an affidavit setting forth the name and the last known address of the judgment debtor and the judgment creditor.

B. Promptly upon the filing of the foreign judgment and the affidavit, the clerk of the district court shall mail a notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice

shall include the name and address of the judgment creditor and his attorney, if any, in this state. In addition, the judgment creditor shall mail a notice of the filing of the judgment to the judgment debtor, certified mail, and shall file proof of the mailing with the clerk.

C. No execution or other process for enforcement of a foreign judgment filed pursuant to this section shall issue until twenty days after the date the judgment is filed.

NMSA 39-4A-5 Stay.

A. If the judgment debtor shows the district court that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

B. If the judgment debtor shows the district court sufficient grounds upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction that is required in this state.

NMSA 39-4A-6. Optional procedure.

> The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under the Foreign Judgments Act [39-4A-1 to 39-4A-6 NMSA 1978] remains unimpaired.

NMSA 35-12-19. Garnishment; district court; magistrate court; small claims court.

> Garnishment may be issued in the district court, magistrate court or small claims court. Sections 35-12-1 through 35-12-18 NMSA 1978 apply to the issuance of garnishment in the district court, magistrate court or small claims court; provided, however, that in the event the district court has jurisdiction, the district court clerk may issue the writ of garnishment. In those cases filed in small claims court, the small claims court may issue the writ of garnishment.

NMRA Rule 1-065.2. Garnishment.

> A. Garnishment procedure. After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.
>
> B. Service of writ of garnishment. A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service

filed in the same manner as provided by Rule 1-004 NMRA for service of the summons and complaint.

* * *

F. Service on judgment debtor by garnishee. On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

Cited Constitutional Provisions:

Constitution of the United States

Article I Section 8 Clause 17

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in

which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise

> reexamined in any court of the United States, than according to the rules of the common law.

Amendment XIV Section 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On or about April 16, 2008 Plaintiffs-Petitioners commenced the original action in detinue in "NMDC" (State of New Mexico First Judicial District Court) alleging among other facts that Defendants-Respondents took Plaintiffs-Petitioners' chattels, the taking occurred in Santa Fe county New Mexico, and the chattels were not taken in execution on a bona fide, valid judgment or other final or mesne process, that Plaintiffs-Petitioners made demand for return of the chattels, that Defendants-Respondents refused to return the chattels, and that at all times relevant Plaintiffs-Petitioners are entitled to possession of

the chattels and the taking of the chattels caused Plaintiffs-Petitioners damage.

Defendants-Respondents answered the complaint and created material issues of fact by denying most of the Complaint's allegations, and alleging Plaintiffs-Petitioners were served a judgment and writ of garnishment and the chattels were taken in execution of an alleged bona fide or valid final judgment from the United States District Court for the District of New Mexico (hereinafter "USDC"), and that the law of the state of New Mexico was followed in the taking of the chattels.

The record in "NMDC" reflects Plaintiffs-Petitioners were never served a writ of garnishment or a writ of execution issued by a clerk of a New Mexico court, that Plaintiffs-Petitioners maintain at all times the alleged judgment is a foreign judgment, that no writ of garnishment was ever issued by a clerk of a New Mexico court and served upon Defendants-Respondents or Plaintiffs-Petitioners, and the law of the state of New Mexico was not followed in the taking of the chattels. The record further reflects the Clerk of the First Judicial District Court of the state of New Mexico searched the records in Santa Fe county and found no judgments of record against Plaintiffs-Petitioners either foreign or domestic.

The alleged judgment of the "USDC" that Defendants-Respondents rely upon is by definition a foreign judgment; prior to Defendants-Respondents

taking Plaintiffs-Petitioners' chattels the alleged judgment was never given recognition as a valid judgment by filing, registration or domestication, and further fails to display the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form, contains no certification under seal that the signer has the official capacity and that the signature is genuine, no final certification as to the genuineness of the signature and official position, nor is there any testimony it is correct by a witness who has compared it with the original.

Defendants-Respondents moved for summary judgment on the basis the chattels were taken in execution of an alleged bona fide or valid final judgment from the "USDC", in Reply to Plaintiffs' opposition to Dordane Nasseri's and Wells Fargo Bank, N.A.'s Motion for Summary Judgment, Defendants-Respondents requested the trial court take judicial notice of the alleged "USDC" judgment pursuant to NMRA Rule 1-044(A)(3), and alleging NMSA 1978, § 35-12-3(A)(C)(1969) required the Defendants-Respondents to comply with the alleged judgment.

Plaintiffs-Petitioners' opposed the court taking judicial notice on the grounds that the alleged judgment was not authenticated pursuant to an act of Congress, not complying with the rules of evidence, and not having been domesticated as required by New Mexico law, and further opposed summary

judgment on the grounds there are material issues of fact in dispute, that Plaintiffs-Petitioners were never served a writ of garnishment or a writ of execution issued by a clerk of a New Mexico court, that Plaintiffs-Petitioners maintain at all times the alleged "USDC" judgment is a foreign judgment requiring registration and domestication, that no writ of garnishment was ever issued by a clerk of a New Mexico court and served upon Defendants-Respondents or Plaintiffs-Petitioners, that the law of the state of New Mexico was not followed in the taking of the chattels and the chattels were not taken in execution on a bona fide, valid judgment or other final or mesne process.

Petitioners also moved to strike the alleged judgment for not being given full faith and credit recognition by registration and domestication.

At a hearing on Defendants-Respondents motion for summary judgment "NMDC" judge Hon. James A. Hall stated in open court that the alleged judgment from the "USDC" is not required to be addressed as a foreign judgment; Hall subsequently granted summary judgment to Defendants-Respondents and denied Petitioners' Motion to Strike, which order Plaintiffs-Petitioners appealed to "NMCA". The "NMDC" order appears at App. 10.

"NMCA" proposed summary dismissal of the appeal on the grounds that because Rule 1-044(A)(3) NMRA requires New Mexico Courts to take judicial notice of the public and private acts of the judicial

departments of the United States and New Mexico garnishment statutes, domestication of the alleged judgment is unnecessary as a matter of law, and further NMSA 35-12-3 makes it unlawful for Respondents to not comply with the alleged "USDC" order.

Plaintiffs-Petitioners opposed summary disposition on the grounds that there are material issues of fact in dispute precluding the trial court's award of summary judgment, that the requirement to take judicial notice of the public and private acts of the judicial departments of the United States under Rule 1-044(A)(3) NMRA cannot and does not dispense with the requirement of domestication per NMSA 39-4A-3 to give the alleged judgment full faith and credit recognition as a valid judgment PRIOR to taking the chattels, that NMSA 35-12-19 makes it clear that NMSA 35-12-3 applies solely to judgments of New Mexico courts and does not apply to judgments of the federal courts, and there was no judgment either foreign or domestic filed with the New Mexico district court clerk, nor was an application made by the judgment creditor for a writ of garnishment per NMRA Rule 1-065.2 A, nor was a writ of garnishment issued by a New Mexico Court and served upon Petitioners as required by NMRA Rule 1-065.2 F, and the alleged judgment was not authenticated pursuant to Title 28 U.S.C. § 1738 and summary disposition would be in conflict with prior decisions of the "NMCA" and this Court.

"NMCA" summarily disposed of Plaintiffs-Petitioners' Appeal determining that because Rule 1-044(A)(3) NMRA requires New Mexico Courts to take judicial notice of the public and private acts of the judicial departments of the United States and New Mexico garnishment statutes, domestication of the alleged judgment is unnecessary as a matter of law, that New Mexico garnishment law provides the method for collecting on federal judgments and NMSA 35-12-3 makes it unlawful for "Respondents" to not comply with the alleged order of garnishment. A copy of the court's decision appears at App. 1.

Plaintiffs-Petitioners moved for reconsideration of the summary disposition on the grounds that "NMCA" decision is in conflict with the decision of the court in *Walter E. Heller Western, Inc. v. Ditto*, N.M. App. 1998, 959 P.2d 560, 125 N.M. 226, *cert. denied*, 958 P.2d 105, 125 N.M. 147 (1998), and contrary to the holdings of the courts in *Stoll v. Gottlieb*, 305 U.S. 165, 170, 59 S.Ct. 134, 83 L. Ed. 104 (1938) and *Galef v. Buena Vista Dairy*, 117 N.M. at 703-04, 875 P.2d at 1134-35 (1994), and overlooked or misapprehended the law and facts, NMSA 35-12-3 only makes it unlawful for "Respondents" to not comply with writs of garnishment issued by the courts of New Mexico, that absent prior filing and registration Plaintiff-Petitioners were denied the opportunity to defend against the judgment, and that the alleged "USDC" judgment is not authenticated.

The motion was denied and Plaintiffs-Petitioners sought further review in the New Mexico Supreme Court (hereinafter "NMSC") which denied review without decision on or about March 22, 2009. A copy of the court's order appears at App. 13. This petition is timely.

ARGUMENT

Argument of the Questions Presented for Review

Does the requirement for New Mexico courts to take judicial notice of official acts of the judicial departments of the United States make filing, registration and domestication of federal judgments prior to execution unnecessary as a matter of law? No.

Does New Mexico Court of Appeals decision conflict with relevant decisions of this Court? Yes.

Has NMCA decided an important federal question in a way that conflicts with the decisions of other state courts of last resort? Yes.

In disposing of Petitioners' appeal "NMCA" decided that because NMRA Rule 1-044(A)(3) requires New Mexico Courts to take judicial notice of the public and private acts of the judicial departments of the United States and New Mexico garnishment statutes, domestication of the alleged judgment is unnecessary as a matter of law, that New Mexico

garnishment law provides the method for collecting on federal judgments and NMSA 35-12-3 makes it unlawful for "Respondents" to not comply with the alleged order of garnishment from "USDC".

Concerning a federal bankruptcy court judgment the New Mexico Court of Appeals decided,

> " . . . The judgment is a foreign judgment. See § 39-4A-2 ("'[F]oreign judgment' means any judgment, decree or order of a court of the United States.").
>
> {4} To enforce a foreign judgment in New Mexico, a judgment creditor must first domesticate the judgment in a New Mexico district court. See Galef v. Buena Vista Dairy, 117 N.M. 701, 703-04, 875 P.2d 1132, 1134-35 (Ct. App. 1994) (to enforce a sister state judgment, the "'judgment must first be made a judgment in the state [in which] it is to be enforced'" id. (quoting Restatement (Second) of Judgments § 8 cmt. d, at 86 (1982)). It does so by either: (1) filing a copy of the authenticated foreign judgment with the district court clerk of a county in New Mexico in which the judgment debtor resides or has property or property rights subject to the judgment and conforming with the other requirements of the Foreign Judgments Act, NMSA 1978, §§ 39-4A-1 to -6 (1989, as amended through 1994); or (2) bringing a common-law action to enforce the judgment. See §§ 39-4A-3, -4, and -6.

{5} The domestication process provides the manner in which New Mexico courts recognize judgments of the federal courts, see Stoll v. Gottlieb, 305 U.S. 165, 170 (1938), and give full faith and credit to judgments of other state courts. See Galef, 117 N.M. at 703-04, 875 P.2d at 1134-35. The domestication of a federal judgment in state court rests on principles of res judicata. See Stoll, 305 U.S. at 170-71 (under Article IV, Section I of the United States Constitution, judgments of federal courts sitting in a state have the "same dignity" in the state's courts as the judgments of the state's own courts). Through domestication, a foreign judgment becomes a judgment of a New Mexico district court. See § 39-4A-3 (when properly filed, the district court clerk shall treat the foreign judgment as a state court judgment); Galef, 117 N.M. at 704, 875 P.2d at 1135 (judgment domesticating foreign judgment converts foreign judgment into separate New Mexico judgment). The rights to execute and levy to enforce a foreign judgment in New Mexico derive from the domestication by a New Mexico district court, not by the grant of judgment by the originating foreign court. Once a New Mexico district court has acted on a foreign judgment, litigants need not return to the originating foreign court to litigate issues related to the enforcement of a foreign judgment in New Mexico. See § 39-4A-3 (when foreign judgment is filed under Foreign Judgments Act, New Mexico court

> has power over proceedings to reopen, vacate, stay, enforce, or satisfy the judgment). Thus, when a foreign judgment is domesticated in a district court in New Mexico, that court has jurisdiction to address and resolve issues concerning the judgment, including revival." Walter E. Heller Western, Inc. v. Ditto, N.M. App. 1998, 959 P.2d 560, 125 N.M. 226, certiorari denied 958 P. 2d 105 N.M. 147.

Also in a prior New Mexico Court of Appeals decision

> Purpose of Uniform Enforcement of Foreign Judgments Act, upon which New Mexico's Foreign Judgments Act is based, is to provide speedy and economic means of accomplishing that which the full faith and credit clause requires of states. U.S.C.A. Const. Art 4 § 1; NMSA 1978 §§ 39-4A-1 to 39-4A-6. Conglis v. Radcliffe, 889 P.2d 1209, 119 N.M. 287.
>
> To give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit. Galef v. Buena Vista Dairy, 117 N.M. at 703-04, 875 P.2d at 1134-35, quoting M'Elmoyle v. Cohen, 38 U.S. (13 Pet.) 312, 325, 10 L. Ed. 177 (1839).

This court's previous decisions also make clear the requirements of registration and domestication according to the laws of the state,

> To give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit. It must be conceded, that the judgment of a state Court cannot be enforced out of the state by an execution issued within it. M'Elmoyle v. Cohen, 38 U.S. (13 Pet.) 312, 325, 10 L. Ed. 177 (1839).
>
> as does Stoll v. Gottlieb, 305 U.S. 165, 170, 59 S.Ct. 134, 83 L.Ed. 104 (1938) upon which the New Mexico Court of Appeals relied in deciding.
>
> "The domestication process provides the manner in which New Mexico courts recognize judgments of the federal courts".

Walter E. Heller Western, Inc. v. Ditto, supra.

The alleged judgment was never authenticated pursuant to an act of congress (Title 28 U.S.C. § 1738) so "NMDC" could not take judicial notice of it. Further, taking judicial notice of the alleged judgment AFTER taking the chattels cannot give the alleged judgment nunc pro tunc recognition under Article IV § 1 and Title 28 U.S.C. § 1738. Both the judgment creditor and Defendants-Respondents failed to avail themselves of the domestication procedures of NMSA 1978, §§ 39-4A-1 to 39-4A-6 (1989), as amended through 1994, neither one asked the District Court to grant judgment recognizing the alleged federal judgment, to the contrary Defendants-Respondents requested the district court take judicial

notice of an act of the judicial department of the United States AFTER taking the chattels. Both the judgment creditor and Defendants-Respondents failed to ask the court to domesticate the alleged federal judgment BEFORE taking the chattels, thereby omitting an essential step.

In light of the foregoing the requirement to take judicial notice of the alleged judgment cannot and does not fulfill the requirements of Article IV § 1 Title 28 U.S.C. § 1738 Full Faith and Credit recognition as a valid judgment, nor does the requirement to take judicial notice make filing, registration and domestication of federal judgments prior to execution unnecessary as a matter of law, and the "NMCA" decided this important federal question in a way that conflicts with the decision of the New Mexico Court of Appeals and the relevant decisions of this Court.

Does the USDC have attachment jurisdiction in Santa Fe county New Mexico? No.

Title 28 U.S.C. § 111 creates the District of New Mexico and Title 28 U.S.C. § 132 creates the "USDC". As set forth in the Constitution of the United States at Article I Section 8 Clause 17. Congress has no legislative jurisdiction in Santa Fe County, New Mexico, other than lands of which title and jurisdiction have been ceded to the United States by New Mexico, or lands over which it reserved jurisdiction upon New Mexico's admission as a state. This

can be readily ascertained by perusal of The Report of The Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States (said report is titled "Jurisdiction over Federal Areas within the States" and the Library of Congress document number INB/10/1/957/PT2), to which Petitioners direct this court's attention. No one disputes that Petitioners' chattels were not located in a federal enclave within New Mexico. Thus, "USDC" is without attachment jurisdiction to issue execution on its own judgments and take Petitioners' chattels from a location that all parties agree is not subject to the legislative jurisdiction of Congress, again "NMCA" decision conflicts with the relevant decisions of this Court in *Caha v. United States*, 152 U.S. 211 (1894).

> The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the ***Exclusive jurisdiction*** of the national government.

Caha v. United States, 152 U.S. 211 (1894) (emphasis added).

Were Petitioners' chattels taken in execution pursuant to New Mexico law? No.

Did "NMCA's" decision that because Rule 1-044(A)(3) NMRA requires New Mexico Courts to take judicial notice of the public and private acts of the judicial departments of the United States and New Mexico garnishment statutes, domestication of the alleged judgment is unnecessary as a matter of law, that New Mexico garnishment law provides the method for collecting on federal judgments and NMSA 35-12-3 makes it unlawful for "Respondents" to not comply with the alleged order of garnishment from "USDC", rest on an adequate, independent determination of state law? No.

The requirements for registration and domestication are set forth in NMSA 1978, §§ 39-4A-1 to 39-4A-6 (1989, as amended through 1994) which defines the "USDC" judgment as a foreign judgment requiring registration and domestication PRIOR to execution. "NMCA" decision did not rest on an adequate independent determination of NMSA 1978, §§ 39-4A-1 to 39-4A-6 (1989, as amended through 1994).

Additionally, Garnishment procedure in New Mexico is found at NMRA Rule 1-065.2

> 1-065.2. Garnishment.
>
> A. Garnishment procedure. **After the filing of the judgment** on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall

> issue a writ of garnishment. (emphasis added)
>
> B. Service of writ of garnishment. A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 1-004 NMRA for service of the summons and complaint.
>
> * * *
>
> F. Service on judgment debtor by garnishee. On or before the fourth business day following service of the writ of garnishment, the garnishee **shall** mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule. (emphasis added)

The first step in garnishment under New Mexico law requires filing of the judgment, and issuance of the writ of garnishment by the clerk of the New Mexico Court. Further, NMSA 35-12-3 only makes it unlawful for "Respondents" to not comply with writs of garnishment issued by the courts of New Mexico.

> 35-12-19. Garnishment; district court; magistrate court; small claims court.
>
> Garnishment may be issued in the district court, magistrate court or small

> claims court. Sections 35-12-1 through 35-12-18 NMSA 1978 apply to the issuance of garnishment in the **district court, magistrate court or small claims court**; provided, however, that in the event the district court has jurisdiction, the district court clerk may issue the writ of garnishment. In those cases filed in small claims court, the small claims court may issue the writ of garnishment. (emphasis added)

The record reflects the alleged judgment was never filed and no such writ issued or was served upon Petitioners.

"NMCA" decision that NMSA 35-12-3 makes it unlawful for "Respondents" to not comply with the alleged writ of garnishment does not rest on an adequate, independent determination of NMRA Rule 1-065.2 which requires filing of the alleged judgment, nor NMSA 35-12-19 which clearly states that NMSA 35-12-3 applies ONLY to the issuance of garnishment by a New Mexico Court; "NMCA" did not address this issue in its decision and "NMCA" decision did not rest on an adequate independent determination of New Mexico law.

The restrictions of NMSA 35-12-19 limit the manner in which NMSA 35-12-3 could require "Respondents" to comply with a writ of garnishment, by registration and domestication of the alleged judgment pursuant to NMSA 1978, §§ 39-4A-1 to 39-4A-6 (1989, as amended through 1994), FILING the judgment with the New Mexico Court, issuance of the

writ by the clerk of said court and service of the writ, all pursuant to NMRA Rule 1-065.2, PRIOR to taking the chattels. None of these steps were accomplished prior to taking Petitioners' chattels, thus Petitioners' chattels were not taken in execution pursuant to New Mexico law and Petitioners have been denied due process of law, a right protected by Amendment V and Amendment XIV § 1 of the Constitution of the United States.

Do the state court's decisions deprive Petitioners of equal protection of the law accorded to other litigants similarly situated? Yes.

As set forth above, the litigants in *Walter E. Heller Western, Inc. v. Ditto*, *supra*; *Conglis v. Radcliffe*, *supra*; *Galef*, *supra*; *Stoll v. Gottlieb*, *supra*; all enjoyed the protections of the law requiring prior domestication of foreign judgments to give the judgment recognition as a valid judgment before it is used to execute on property in one of the several states; the "NMCA" and "NMDC" decisions denied Petitioners equal protection of the law accorded other litigants in like circumstance, a right protected by the Constitution of the United States Amendment XIV Section 1.

Do the state court decisions deprive Petitioners of due process, access to the courts, and right to trial by a jury? Yes.

It is only AFTER the filing of the judgment pursuant to NMSA 39-4A-3 and NMRA Rule 1-065.2, that Petitioners' chattels are subject to garnishment and the judgment is subject to the same procedures, defenses and proceedings for reopening, vacating, staying, enforcing or satisfying as a judgment of the district court of New Mexico and may be enforced or satisfied in like manner. Absent such filing Petitioners have been denied the due process opportunity to challenge the judgment.

Petitioners contend the chattels were not taken in execution on a bona fide judgment or other final or mesne process; Respondents contend they are entitled to summary judgment as the chattels were taken in execution on an alleged judgment from "USDC". Petitioners contend there are material issues of fact in dispute and absent registration and domestication per NMSA 1978, §§ 39-4A-1 to 39-4A-6 (1989, as amended through 1994), the chattels were not taken in execution of a bona fide judgment or other final or mesne process and Respondents are not entitled to judgment as a matter of law.

Material issues of fact remained for trial and "NMDC" proceeded to try the facts upon which Respondents' liability depends in excess of its jurisdiction, further, "NMDC" granted summary judgment which Respondents are not entitled to as a matter of

law as the alleged judgment creditor has no rights to execute and levy to enforce a foreign judgment absent registration and domestication, "NMCA" upheld "NMDC" decision and as a result Petitioners' action in detinue to recover the chattels was not tried by a jury. These issues appear in Petitioners' Amended Docketing Statement and Memorandum.

Petitioners contend "NMSC" "NMDC" and "NMCA" decisions deprive Petitioners of the federally protected rights to due process opportunity to avail themselves of the same procedures, defenses and proceedings for reopening, vacating, or staying the alleged judgment per NMSA 39-4A-3 and NMRA Rule 1-065.2, deprive Petitioners of access to the courts for a trial by a jury of the facts upon which Defendants-Respondents' liability depends, which are rights protected by the Constitution of the United States Amendment V and Amendment VII.

REASONS WHY THE WRIT SHOULD ISSUE

The substantive issues of law raised herein have already been decided in previous cases, both at the state courts of last resort and at the level of this Court. "NMSC" and "NMCA" sanctioned the departure by the "NMDC" from the usual course of judicial proceedings to give a federal judgment recognition under Article IV § 1 of the Full Faith and Credit Clause, deciding an important federal question in a way that conflicts with the decision of another state

court of last resort and with relevant decisions of this court, and their decision disregarded decrees of this court; said decisions have the effect of depriving Petitioners of rights protected by the Constitution of the United States, and if this departure from the usual course of judicial proceedings is not curtailed other litigants will also be subjected to the whim of the court, rather than the rule of law.

Issuing the writ will be in aid of this Court's appellate jurisdiction to facilitate review of the decisions of the state court of last resort and there is no other court to which Petitioners can apply for review. Petitioners cannot obtain adequate relief in any other form or from any other court and is without a remedy for review of said decisions. The exceptional circumstances set forth in this petition warrant the exercise of the Court's discretionary powers. No previous application for this writ has been made to this Court. Petitioners is not an attorney nor trained in the law, and requests that any superficial imperfections in this petition be excused.

CONCLUSION

Petitioners request this court grant review of the decisions of "NMSC" "NMDC" and "NMCA" and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

DANIEL GABINO MARTINEZ
STEPHANY HALENE MARTINEZ

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

DANIEL GABINO MARTINEZ and
STEPHANY HALENE MARTINEZ,

Plaintiffs-Appellants,

v. **NO. 29,040**

DORDANE MASSERI and
WELLS FARGO BANK,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT
OF SANTA FE COUNTY
James A. Hall, District Judge

Daniel Gabino Martinez
Stephany Halene Martinez
Santa Fe, NM

Pro Se Appellants

Moses, Dunn, Farmer & Tuthill PC
Alicia L. Gutierrez
Albuquerque, NM

for Appellees

MEMORANDUM OPINION

(Filed Feb. 20, 2009)

CASTILLO, Judge.

Daniel Gabino Martinez and Stephany Halene Martinez (Plaintiffs) appeal from the district court's order granting the motion for summary judgment in

favor of Dordane Masseri [sic] (Nasseri) and Wells Fargo Bank, N.A. (Defendants) and denying the parties' motions to strike. [RP 231] On appeal, Plaintiffs contend that the district court erred in granting Defendants' motion for summary judgment and in denying their motion to strike. The calendar notice proposed summary affirmance. [Ct. App. File, CN1] Plaintiffs have filed a memorandum in opposition. [Ct. App. File, MIO] Unpersuaded, we affirm.

DISCUSSION

Issues on Appeal: Plaintiffs contend that the district court erred in granting Defendants' motion for summary judgment for the following reasons: (1) the district court applied the wrong standard of review because material issues of fact remain for trial [DS 6-8]; (2) the district court failed to state the factual allegations relied upon in granting summary judgment [DS 9-10]; (3) the district court erred in refusing to grant Plaintiffs' motion to strike on the basis that the "alleged judgment creditor has no rights to execute and levy to enforce a foreign judgment absent registration and domestication by a New Mexico district court" [DS 10]; (4) the district court erred in not allowing Plaintiffs' exhibits to be admitted since they establish that material issues of fact remain, making summary judgment inappropriate [DS 10]; and (5) absent the undomesticated foreign judgment against Plaintiffs, there is no evidence to warrant summary judgment in favor of Defendants [DS 11]. We have considered Plaintiffs' contentions in the

docketing statement and the memorandum. For the reasons discussed below, we affirm the district court's order granting Defendants' motion for summary judgment and the order denying the motion strike.

1. The Correct Standard of Review (Issue 1). "An appeal from the grant of a motion for summary judgment presents a question of law and is reviewed de novo." *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 16, 141 N.M. 21, 150 P.3d 971. "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Id.* "Where reasonable minds will not differ as to an issue of material fact, the court may properly grant summary judgment." *Id.* As we discuss below, our review of the record indicates that no material issues of fact remain requiring a trial and Defendants are entitled to summary judgment as a matter of law. Therefore, we hold that the district court did not apply the wrong standard of review in the order granting summary judgment to Defendants.

2. No Material Factual Issues Remain and Defendants Are Entitled to Summary Judgment as a Matter of Law (Issues 2, 4, 5). The motion for summary judgment against Plaintiffs was granted based on the following undisputed facts: (1) Plaintiffs opened jointly owned bank accounts at Defendant bank [RP 25, ¶¶ 3-6]; (2) as of February 7, 2008, Plaintiffs' bank accounts held $44,929.45 [RP 26, ¶ 11]; (3) on February 7, 2008, Defendant bank was served with a writ of garnishment issued by the

United States District Court for the district of New Mexico against the property of Plaintiff Daniel Gabino Martinez [RP 25, ¶ 7, Exhibit A, RP 33]; (4) Defendant bank filed an answer to the writ informing the federal district court that it held the funds in Plaintiffs' bank accounts [RP 26, ¶ 12]; (5) Plaintiffs did not respond to the writ of garnishment, object to it, or file a claim of exemption [RP 26, ¶ 13, Exhibit B, RP 36]; (6) the order of garnishment was entered on March 6, 2008 [RP 27, ¶ 14, Exhibit C, RP 43]; (7) the order of garnishment ordered Defendant bank to pay the funds in Plaintiffs' bank accounts to the United States [RP 44], and Defendant bank did so [RP 27, ¶ 15]. Plaintiffs then filed their complaint for money due against Defendants, asserting that they were wrongfully denied the funds in the bank accounts [RP 27, ¶¶ 15-16].

Plaintiffs' complaint, their response to the motion for summary judgment, and their docketing statement contend that Defendants, the bank manager and the bank, wrongfully refused them possession and enjoyment of the funds in their bank accounts held at Defendant bank. [RP 1, RP 74, ¶ 4, DS] Although not denying the existence or validity of the federal order of garnishment against Plaintiffs, Plaintiffs contend that Defendants have failed to properly execute and levy to enforce the order of garnishment, which was issued in federal district court and is therefore a foreign judgment that is required to be domesticated in New Mexico district

court in order to be enforced or levied upon. [RP 76-78, ¶¶ 10-15] In addition, on appeal Plaintiffs contend that the district court erred in failing to enumerate the facts relied upon in the order granting summary judgment and erred in refusing to find that Plaintiffs' exhibits create material issues of fact.

First, the district court did not err in failing to enumerate the facts relied upon in granting the motion for summary judgment. As we discussed in the calendar notice, the facts relied upon consist of the undisputed facts enumerated in Defendants' motion for summary judgment as entitling Defendants to summary judgment, with which the district court agreed in granting the motion. Second, Plaintiffs' exhibits, consisting of Plaintiffs' requests for lists of foreign judgments against them and the State district court clerks' negative responses thereto do not create a material issue of fact with regard to the undisputed existence of an order of garnishment issued by the United States District Court for the District of New Mexico based on a judgment in favor of the United States against Plaintiffs in *United States v. Martinez*, Case No. 6:06-cv-01146-PJK-LFG, served upon Defendant bank and Defendant branch manager, and requiring Defendant bank to comply therewith by turning over Plaintiffs' funds to the United States.

Third, while Plaintiffs rely on Defendants' alleged failure to comply with the domestication of foreign judgments statute, citing NMSA 1978, Section 39-4A-3 (1994), they ignore New Mexico's law

requiring New Mexico's courts to take judicial notice of the judicial proceedings of the United States and New Mexico's garnishment statutes. Rule 1-044(A)(3) NMRA requires the courts of New Mexico to take judicial notice of the public and private official acts of the judicial departments of the United States. In this case, the judgment against Plaintiff in *Martinez*, the writ of garnishment, and the order of garnishment relating thereto, which are attached to Defendants' motion for summary judgment as Exhibits A and C [RP 33, 43], are official acts of the judicial departments of the United States, of which the first judicial district court of New Mexico is required to take judicial notice. As such, domestication of the federal judgment against Plaintiffs in *Martinez* is unnecessary as a matter of law. To the extent that in the memorandum Plaintiffs continue to raise the same arguments to dispute that this legal analysis is correct, we are not persuaded. *See, e.g., Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

Moreover, as Defendants point out, in focusing on Defendants' alleged failure to domesticate the federal judgment, Plaintiffs fail to recognize that New Mexico garnishment law provides the method for collecting on federal judgments and makes it unlawful for the garnishee, in this case Defendants, not to comply with the order of garnishment. *See* NMSA 1978,

§ 35-12-3 (1969). Pursuant to New Mexico garnishment law, in holding assets belonging to a judgment debtor, in this case Plaintiffs, Defendants were required to comply with the order of garnishment and pay the Plaintiffs' funds in the bank accounts to the United States. As a matter of law, Defendants are not liable to Plaintiffs for doing so in accordance with the law. To the extent that Plaintiffs continue to deny the validity of these legal principles in the memorandum, we are not persuaded.

Finally, while Plaintiffs continue, incorrectly, to contend that the judgment in *Martinez* was required to be domesticated to be enforced, as Defendants point out, Plaintiffs do not otherwise contest the existence or validity of the federal judgment, writ, and order of garnishment. [RP 59] Exhibit B of the motion for summary judgment, which is the docket sheet for *Martinez*, indicates that Plaintiffs did not object to the writ of garnishment or claim any exemption to it and that the order of garnishment was entered upon the writ. [RP 59, Exhibit B, RP 36]

As such, we remain persuaded that there are no issues of material fact requiring a trial and that Defendants are entitled to judgment as a matter of law. We therefore affirm the district court's order granting summary judgment to Defendants.

3. The District Court Did Not Err in Denying Plaintiffs' Motion to Strike (Issue 3). Plaintiffs also contend that the district court erred in denying their motion to strike. [RP 164-71] Plaintiffs moved to

strike Defendants' affirmative defense to the complaint, which states that Plaintiffs' funds in the bank accounts were lawfully transferred to the United States pursuant to the writ and order of garnishment entered upon the federal judgment in *Martinez*. [RP 10, ¶ 14] In their motion to strike, Plaintiffs argued that Defendants failed to properly enforce a foreign judgment by domesticating it and, therefore, Defendants had no right to levy upon the order of garnishment. [RP 164-71] These are the same arguments that Plaintiffs raise in the response to the motion for summary judgment. [RP 73-79] Defendants' response to the motion to strike makes the same points that Defendants make in their motion for summary judgment and their reply to Plaintiffs' response to the motion for summary judgment. [RP 172-75] We have already discussed why Plaintiffs' contentions do I not entitle Plaintiffs to relief as a matter of law.

Accordingly, we affirm the district court's decision to deny Plaintiffs' motion to strike.

CONCLUSION

We affirm the district court's order granting Defendants' motion for summary judgment and denying Plaintiffs' motion to strike. [RP 231]

IT IS SO ORDERED.

/s/ Celia Foy Castillo
CELIA FOY CASTILLO, Judge

WE CONCUR:

/s/ James J. Wechsler
JAMES J. WECHSLER, Judge

/s/ Jonathan B. Sutin
JONATHAN B. SUTIN, Judge

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

NO. D-0101-CV-2008-01022

DANIEL GABINO MARTINEZ and
STEPHANY HALENE MARTINEZ

Plaintiffs,

v.

DORDANE MASSERI and
WELLS FARGO BANK,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DORDANE NASSERI AND WELLS FARGO BANK, N.A. AND DENYING THE MOTIONS TO STRIKE

(Filed Sep. 22, 2008)

THIS MATTER having come before the Court on Defendants Dordane Nasseri's, incorrectly named by Plaintiffs herein as Dordane Masseri, and Wells Fargo Bank, N.A.'s (collectively, the "Defendants") Motion for Summary Judgment, Defendants' request to strike Plaintiffs' Supplemental Response Brief set forth in its Reply to Plaintiffs' Supplemental Response to Dordane Nasseri's and Wells Fargo Bank, N.A.'s Reply to Plaintiffs' Opposition to Motion for Summary Judgment (hereinafter referred to as "Defendants' Motion to Strike") and Plaintiffs' Motion to Strike and Memorandum Brief in Support (hereinafter referred to as "Plaintiffs' Motion to

Strike"), the Court having had a hearing on all the Motions on September 12, 2008 and being fully advised in the matter finds:

1. That Defendants' Motion for Summary Judgment is well taken and should be granted.

2. That Defendants' Motion to Strike is not well taken and should be denied.

3. That Plaintiffs' Motion to Strike is not well taken and should be denied.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Defendants Dordane Nasseri's and Wells Fargo Bank, N.A.'s Motion for Summary Judgment is hereby granted.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Defendants' Motion to Strike and Plaintiffs' Motion to Strike are hereby denied.

This is a final judgment as to the claims of Plaintiffs against Dordane Nasseri and Wells Fargo, there being no just reason to delay entry hereof.

/s/ James Hall
Honorable James Hall

SUBMITTED:

MOSES, DUNN, FARMER & TUTHILL, P.C.

By /s/ Alicia L. Gutierrez
Alicia L. Gutierrez
Attorneys for
Wells Fargo Bank N.A.

APPROVED AS TO FORM ONLY:

_____
Daniel Gabino Martinez

[Objections noted by the Court and overruled]

_____
Stephany Halene Martinez

THE SUPREME COURT OF THE STATE OF NEW MEXICO
April 22, 2009

NO. 31,644

DANIEL GABINO MARTINEZ and STEPHANY HALENE MARTINEZ,

Plaintiffs-Petitoners [sic],

vs.

DORDANE MASSERI and WELLS FARGO BANK,

Defendants-Respondents.

ORDER

This matter coming on for consideration by the Court upon petition for writ of certiorari, and the Court having considered said petition, and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is denied in Court of Appeals number 29040.

IT IS SO ORDERED.

WITNESS, The Hon. Edward L. Chávez, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 22nd day of April, 2009.

(SEAL) /s/ Madeline Garcia
Madeline Garcia, Chief Deputy Clerk

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

DANIEL GABINO MARTINEZ and STEPHANY HALENE MARTINEZ,

Plaintiffs-Appellants,

vs.

DORDANE MASSERI and WELLS FARGO BANK,

Defendants-Appellees. /

No. 29,040
D.C. No.
D-0101-CV-08-1022

CELIA FOY CASTILLO
Presiding Judge

JAMES J. WECHSLER
JONATHAN B. SUTIN
Judges

ORDER

(Filed Mar. 12, 2009)

In this cause, a motion for rehearing having been filed by Appellants, and consideration having been had by all of the members of the original panel,

IT IS ORDERED that the motion for rehearing is DENIED.

/s/ Celia Foy Castillo
Presiding Judge